

- Communal ownership land (e.g. co-operatives), which may include residential, agricultural and commercial/industrial space.

Whereas in rural areas, communal or public land can be all-important, the value of urban communal or public land to the poor is generally narrower than that of urban private land. Communal or public land still plays a vital role, especially for the urban poor, whose access to private space is often inadequate or cater to all their needs. The value of urban land can include:

- Providing space for economic activities, e.g. markets, urban agriculture (vegetables, maize, livestock, etc.)
- Providing space for social activities/ community facilities, e.g. parks, sports fields
- For improving the living environment of the neighbourhood, e.g. trees, plants
- For cultural reasons, e.g. initiation rites, plants for traditional medicines.

3. LEGAL/INSTITUTIONAL FRAMEWORK GOVERNING URBAN LAND

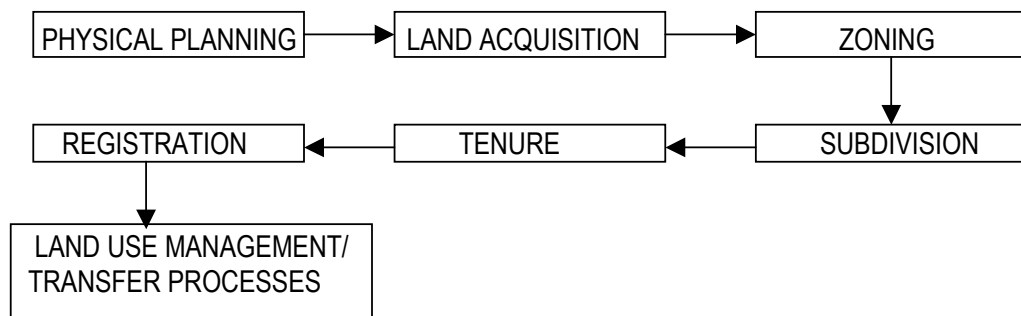
The legal/institutional framework governing urban land is briefly reviewed in two sections:

- Formal and informal processes/organisations
- Delivery programmes

Formal and informal processes and organisations are discussed in greater detail in Appendices 2, 3 and 4 respectively.

3.A. Formal and informal processes/ organisations

There are a number of steps involved in the allocation and use of urban land, as represented by the diagram below. Formal processes, with legislation, regulations and implementing/administering institutions exist for all these steps, but similar steps can also be undertaken informally. For example, in the case of the planned unlawful occupation of a vacant piece of land, the community would select a suitable site, occupy it, informally lay it out and allocate “plots” and communal areas, and *de facto* tenure arrangements would then be regulated by community leaders (as would the subsequent sale and purchase of structures).



Physical planning

Physical planning involves determining where further urban development will go and the nature of that development. There are an overlapping range of policies and regulations with regard to physical planning from

a variety of government departments, including Integrated Development Plans (IDPs), spatial development frameworks, environmental management laws and housing land plans.

Land acquisition

Formal land acquisition processes occur through the market or through expropriation (in terms of the Expropriation Act). Estate agents, who facilitate the sale and purchase of property, are regulated by the Estate Agents Act.

Land development procedures (subdivision/rezoning)

Land development procedures consist of the procedures for the rezoning of permitted land uses and the subdivision/consolidation of land). There are a variety of routes for land development:

- Conventional procedures, e.g. the Town Planning and Townships Ordinance of 1986 used in the former Transvaal and the Land Use Planning Ordinance of 1985 used in the former Cape Province
- Less Formal Township Establishment Act
- Development Facilitation Act (three provinces have provincial equivalents)

Land use management

Land use management is about regulating the use of land. Currently, there are a whole host of conflicting town planning and zoning schemes in urban areas, and provinces and municipalities are introducing new, comprehensive, more flexible zoning schemes. The Land Use Management Bill is intended to be a guide to this process.

Tenure options

Land tenure is the social relationship defining the rights and obligations of individuals or groups towards a piece of land. There are a number of pieces of legislation governing tenure options, e.g. Alienation of Land Act, Sectional Titles Act, Co-operatives Act, Communal Property Associations Act. Rental (leasehold) is a form of tenure existing in common law, but there is legislation intended to increase protection for the rights of tenants, e.g. the Rental Housing Act and the Gauteng Tenants and Landlords Act.

Formal tenure options include:

- Rental (from a private landlord, a municipality, an employer, a social housing institution)
- "Rent-to-buy" or instalment sale from a social housing institution (usually a company established in terms of Section 21 of the Companies Act of 1973)
- Communal ownership (Co-operative, Communal Property Association, Share Block Company established in terms of the Co-operatives Act of 1981, Communal Property Associations Act of 1996 and Share Block Control Act of 1980 respectively). In practice, however, only Co-operatives and Communal Property Associations have been commonly used for low-income people.
- Sectional Title in terms of the Sectional Title Act of 1986: Sectional Title is a combination of individual ownership of units (e.g. flats) together with communal ownership of communal property.
- Individual ownership: ownership is the right to alienate the property at will, i.e. to sell it or bequeath it to one's heirs. It is important to note that there is no such thing as unrestricted ownership, e.g. town planning schemes and building regulations place restrictions on the use of a property.

The concept of formal tenure, especially ownership, has historically played an important role in incremental urban development processes in developing countries. In John Turner's model of urban development (Turner,

1972), very low income “bridgeheader” households are seen as being mainly interested in staying close to job opportunities, low income “consolidators” are seen as being mainly interested in ownership, and middle income “status seekers” are seen as being mainly interested in good quality housing. The crucial step between “bridgeheaders” and “consolidators”, and the precondition for ongoing consolidation processes, is acquiring formal tenure. These ongoing consolidation processes, through which housing is incrementally improved by households, are also linked to “commodification”, in which there is a transformation from land and housing primarily having just a use value to property also having a market value (Ramirez et al., 1992). The granting of formal tenure is also important in this process.

The benefits of ownership are typically perceived as (WCPHD/CCT, 2003):

- To remove possibility of arbitrary eviction
- To provide households with an asset which can be used as security for credit
- To provide a foothold in the housing market through a tradeable asset
- To provide space for home based economic activities
- To foster better living conditions, a better environment and to improve personal security
- To provide the conditions for the development of communities, as residents have a sense of ownership
- To enable greater social control by authorities
- To be able to identify and charge service users
- To encourage greater household investment in housing

Ownership, however, can be inflexible, and the registration and transfer processes can be complex and expensive. Rental and communal tenure can have advantages over ownership in certain cases. Rental can be an appropriate form of tenure for the urban poor – it can often provide better locations than ownership (as new low-income properties for ownership are invariably on cheap peripheral land) and can allow for greater mobility, e.g. in search of job opportunities. Rental is often disliked by the urban poor, however, as it is perceived as being “a waste of money” compared to ownership (Clark et al., 1997). Communal tenure can be suitable for cohesive groups, as it can facilitate social networks and builds on the collective nature of informal tenure processes. The operating costs of communal tenure bodies can mean that communal tenure options are significantly more expensive than individual ownership, though, and communal tenure rights are also generally not as secure as individual ownership because the rights depend upon the soundness of the institution.

Informal tenure rights are also protected through the Constitution and legislation:

- The right of access to adequate housing in S. 26 of the Constitution; the Grootboom Case tested one aspect of this right, namely the obligation of the State to deal with emergency conditions as well as with the long-term progressive realization of the right to adequate housing.
- The Prevention of Illegal Eviction From and Unlawful Occupation of Land Act of 1998, which prescribes the procedures to be followed in evicting unlawful occupiers of land. The court needs to take the rights and needs of the elderly, children, disabled people and women-headed households into account. In addition, where the unlawful occupiers have occupied the land for more than 6 months, alternative land needs to be made available for relocation. There has been confusion over the applicability of the Act (a High Court decision saw it as also applying to tenants who have defaulted on rent). The Department of Housing is attempting to change the act.
- The Extension of Security of Tenure Act of 1997 applies in rural areas and agricultural areas within urban areas. In terms of this act, people who are occupying a piece of land with the consent of the owner or person in charge (including people who have “continuously and openly” occupied private land for 3 years) have certain tenure rights. There has also been confusion over the applicability of this act – an Eastern Cape High Court decision found that it should also apply in urban areas.

Land registration and transfer system

There are essentially two land registration and transfer systems, the formal one run by the Deeds Registry and Surveyor-General's Office, and the informal system operated by community structures. In the formal system, the land surface of South Africa is surveyed into separate pieces of land which are identified by name and/or number. Each piece of land is recorded on a diagram kept in the office of a Surveyor-General, and each property is owned by someone (any property not shown as specifically belonging to someone belongs to the government). Details regarding ownership of land are kept in the Deeds Registry. In 2002, there were a total of 5 707 437 "township erven" (urban plots) and 550 404 "scheme units" (Sectional Title units) on the Deeds Registration System (GCIS, 2002).

Market processes

Within the legal/institutional framework, urban property is bought and sold in the urban property market. From an institutional perspective, key factors in the analysis of property markets are (e.g. Keogh and D'Arcy, 1999):

- The institutional environment: political, social, economic and legal institutions.
- The property market itself as an institution, i.e. a network of formal and informal rules, conventions and relationships which collectively represent the system through which property is used and traded; market and non-market, formal and informal, property rights, land use and development. It should be noted that the acquisition of land is often subject to non-market processes, driven by political or community pressures.
- Property market organisations: users, investors, developers, property service providers, financial service providers, governmental bodies, NGOs, CBOs.

There are a number of laws aimed at promoting a property market in low-income areas (e.g. Home Loan and Mortgage Disclosure Act, Community Reinvestment Act).

Organisations

Key roleplayers include:

- Municipalities: the main roleplayers, responsible for formulating land strategies, for delivering land and housing to the urban poor, for setting aside non-residential land and for spatial planning and land use management.
- Department of Land Affairs: responsible for land-related legislation and for tenure reform; in terms of actual delivery, its emphasis has been on rural areas. The Surveyor's General Office and the Deeds Registry, responsible for the land subdivision, registration and transfer system, are also part of the Department of Land Affairs.
- Department of Housing: responsible for formulating the policy framework for programmes to assist the urban poor in getting access to land and housing.
- Department of Provincial and Local Government: responsible for policies relating to Integrated Development Planning and spatial planning by municipalities, and for the subsidization of bulk infrastructure.
- Provincial Housing Departments: responsible for the administration of the Housing Subsidy Scheme.
- NGOs: The main roleplayers are the Urban Sector Network (USN) and its affiliates and People's Dialogue/uTshani Fund, the NGO arms of the South African Homeless People's Federation. They are involved in supporting groups of the urban poor to get access to land and housing.
- CBOs: There are many groups representing the urban poor on land and housing issues, ranging from those in conflict with the State (e.g. the Landless People's Movement) to those negotiating with the

State around access to land and housing (e.g. the Homeless People's Federation); at a more local level, residents' associations and "street committees" often play a significant role in the regulation of *de facto* tenure rights, both in informal and (some) formal settlements.

- Financial institutions: The property market depends upon access to credit, and the extent to which financial institutions do or don't provide access to credit has a major impact on access to property. The Home Loan and Mortgage Disclosure Act and Community Reinvestment Act are intended to regulate greater involvement of financial institutions in providing credit for lower-income households for purchasing properties, but the mortgage mechanism is generally regarded as inappropriate for the needs of the poor (savings-linked micro-loans from micro-finance institutions such as the Cape Town-based Kuyasa Fund are more appropriate).

3.B. Delivery programmes

Significant urban land and tenure-related delivery programmes include:

- Housing Subsidy Scheme (individual ownership housing projects and institutional housing projects)
- Discount Benefit Scheme: transfer of public rental housing to tenants; municipalities are rapidly transferring public rental housing to individual ownership (and to group ownership to a small extent). In terms of national government policy, cost recoverable rents are being phased in for remaining public rental housing over a 5 year period, which will speed up the transfer process.
- Public Sector Hostels Redevelopment Programme: as part of the upgrading/redevelopment of hostels there is a process of formalizing tenure arrangements for residents, many of whom were previously unregistered, and with no formal security of tenure. Typically lease agreements are concluded and registration cards issued, and permission needs to be sought for temporary visitors to stay in hostels (USN, 2001).
- DLA's land restitution programme: In quantitative terms, land restitution has been a relatively minor delivery programme - Many urban land claims resulted in compensation rather than the allocation of land, but there have been some notable cases of urban land restitution involving well located vacant land, including District Six, Ndabeni and Tramway Road in Cape Town; Fairview and South End in Port Elizabeth; West Bank and East Bank in East London; Cato Manor in Durban; Payneville on the East Rand; and Lady Selbourne in Pretoria. Many of these projects have been slow in getting started, due to lack of development support, but Fairview in Port Elizabeth, a project of 1200 serviced sites due to be completed in 2004, is a notable example of where urban land restitution has been able to contribute to real integration and restructuring of urban areas (USG, 2003).
- DLA's municipal commonage programme: although large areas of land have been delivered in areas like the Northern Cape, the demand for municipal commonage land is decreasing, possibly because low-income residents interested in agriculture prefer to access land near towns through the DLA's LRAD programme.
- Non-residential land: apart from municipal commonages, there are no specific programmes for the provision of non-residential land – it is the municipality's responsibility to ensure that sufficient land for community facilities, commerce and industry and public open space is set aside.

Two of these programmes, the Housing Subsidy Scheme and the municipal commonages programme, are discussed in more detail below, followed by a brief discussion of the main informal delivery mechanisms.

Housing Subsidy Scheme

The Housing Subsidy Scheme is the main mechanism for providing the poor with access to urban land for residential purposes and informal economic activities. In terms of the Housing Subsidy Scheme, subsidies are provided for households with incomes of up to R3 500 p.m. to assist in acquiring housing. The housing subsidy

is used to pay for the costs of land, subdivision, transfer costs, internal infrastructure (roads, stormwater drainage, water, sanitation, streetlighting) and the dwelling unit. The various types of housing subsidy are:

- Project linked subsidy (project funding for the acquisition of land and provision of infrastructure and housing)
- Individual subsidy (to purchase a house, or to purchase a plot and build a house; now generally discontinued due to widespread abuse)
- Consolidation subsidy (for households who own serviced sites – this subsidy is for the dwelling unit only)
- Institutional subsidy (for rental or co-operative housing owned by housing institutions)
- Rural subsidy (for households with uncontested informal land rights in areas where there is no individual ownership)

The project-linked subsidy was introduced in March 1994, individual and consolidation subsidies were introduced in June 1995, institutional subsidies were introduced in December 1995, and rural subsidies were introduced in 2000.

Table 7: Housing subsidy amounts

Monthly joint income (Rands)	Project-linked, individual and rural subsidy (Rands)	Consolidation subsidy (Rands)	Institutional subsidy (Rands)
Indigent category	25 580	15 000	-
0-1500	23 100	12 521	23 100
1501-2500	14 200	-	23 100
2501-3500	7 800	-	23 100
3501+	-	-	-

Note that these are the normal subsidy amounts. These amounts can be increased by up to 15% of the maximum subsidy amount for difficult site conditions (e.g. steep slopes, hard rocky ground or sandy soils with high water tables).

The housing delivery programme has quantitatively been very successful – more than 1.4 million households (over 7 million people) have benefited from access to secure tenure, services and shelter since 1994.

Table 8: Subsidised houses delivered per financial year (April-March)

Province	1994-1997	1997/98	1998/99	1999/00	2000/01	2001/2002	2002/2003	Total
Eastern Cape	6 511	32 223	24 659	20 345	34 021	10 816	58 662	187 237
Free State	13 042	18 001	17 391	7 177	16 088	7 005	9 155	87 859
Gauteng	56 293	70 924	58 170	45 384	38 547	46 723	24 344	340 331
KwaZulu-Natal	17 553	78 468	53 105	28 997	28 547	14 379	24 485	245 534
Limpopo	11 108	15 743	22 899	12 401	20 996	16 667	14 953	114 767
Mpumalanga	19 884	10 873	16 838	4 808	16 457	14 584	21 649	105 093
Northern Cape	6 666	4 768	2 378	2 600	4 148	2 588	6 056	29 213
North West	21 287	20 977	18 367	12 944	14 109	13 885	23 784	125 353
Western Cape	25 321	43 834	34 575	26 916	17 730	16 634	20 500	185 510
Total	177 611	295 811	248 391	161 572	190 643	143 281	203 588	1 420 897

Source: Department of Housing, 2003

The three subsidy types that provide land and housing in urban areas are the project-linked subsidy, individual subsidy and institutional subsidy. These three subsidy types formed 89% of the 2.2 million housing subsidies approved between April 1994 and June 2003. Institutional subsidies, which are the only type of subsidy which allows for tenure options other than ownership, formed only 3% of subsidies approved – 97% of all subsidies were individual ownership subsidies.

Table 9: Subsidies approved April 1994 to June 2003

Type of subsidy	Number Approved April 1994 – June 2003	Percentage
Project-linked	1 714 554	79%
Individual	157 386	7%
Consolidation	233 344	11%
Institutional	60 314	3%
Rural subsidies	671	0%
Total	2 166 269	100%

Source: Department of Housing, 2003

Most land released for low-income households post-1994 has been as part of housing projects, but there have been examples of rapid land release (also known as managed land settlement) programmes in South Africa, in which the emphasis is on releasing serviced land, as with the Independent Development Trust (IDT) site-and-service programme of the early 1990s. The most notable example is Gauteng's Phased Housing Programme, where it was found that concentrating on releasing and servicing land, and then only initiating the programme for the consolidation of topstructures up to two years later, has a number of benefits: more people can be assisted in a shorter space of time, the use of State resources is maximized and the topstructure improvement phase can be more "sensitive to and supportive of community needs and priorities" than conventional contractor projects (Engelbrecht, 2003). Rapid land release has not been a national programme of the Department of Housing, and more recently the Department seems to be moving away from this approach towards a focus on higher quality housing projects, although at local government level rapid land release is generally favoured as the only way to ensure rapid access of as many urban poor households as possible to secure tenure and basic services (the "breadth versus width" debate).

Municipal commonages programme

Municipal commonages are land owned by municipalities and able to be used by urban residents for agricultural purposes, mainly grazing. There are two types of municipal commonage:

- Traditional municipal commonage: land transferred to a municipality by the state (or sometimes by the Dutch Reformed Church) in which the condition of title specifies that the land be for the use and benefit of the public. Much of this commonage is leased to commercial white farmers, and is an important source of revenue for some municipalities in the Northern Cape, e.g. Emthanjeni Municipality typically gets 40-50% of its income from the lease of commonages (Cartwright et al., 2002). The approximate total of all the commonage in the Northern Cape is about 1 640 000 ha of land (HSRC, 2002), of which about 80% is traditional commonage.
- DLA-acquired (Act 126) commonage: land purchased post-1994 under DLA's Municipal Commonages Programme and which was transferred to municipalities with certain conditions, e.g. the municipality must ensure the use of property as commonage for the benefit of the residents, with special emphasis on the poor and less privileged (DLA guidelines specify that households earning less than R2200 per month should be given preference in access to commonages).

The municipal commonages programme has provided 31% of land transferred under all land reform programmes during 1994-2002 (78 projects, 380 819 Ha, 3407 households). Of the total area of commonage, however, 90% was in the Northern Cape. Possible reasons for the uneven spread of the commonage programme are: lack of information and knowledge about the programme, lack of local demand, and the pre-existence or lack of historical commonage use (Wegerif cited in Anderson and Pienaar, 2003).

Table 10: New commonage land (1994-2002)

Province	Ha	%
Eastern Cape	26 117	6.9
Free State	34 648	9.6
Gauteng	912	0.2
KwaZulu-Natal	0	0.0
Limpopo	0	0.0
Mpumalanga	3 626	1.0
Northern Cape	340 868	89.5
North West	7 849	2.1
Western Cape	5 844	1.5
Total	380 819	100.0

Source: DLA, 2003 cited in Anderson and Pienaar, 2003

The DLA's approach to municipal commonages is that it should ideally function as a "stepping-stone" for emergent farmers to gain experience and assets which could be used at a later date to access the LRAD grant and private land (Cartwright et al., 2002). An alternative approach would be the use of municipal commonages for a more diverse range of alternatives as a social security net, e.g. for "graveyards, provision of firewood, sanitation, grazing for draught animals and waste disposal" (Cartwright et al., 2002: 3,13).

Commonages are overwhelmingly used for grazing – there have only been a handful of attempts to use commonage land for other agricultural purposes, e.g. for poultry farming and for growing vegetables (Anderson and Pienaar, 2003). Commonages have had a positive impact on livelihoods – owning livestock can act as a buffer against loss of income from other sources. However, newly obtained municipal commonage land is often situated a considerable distance from towns and there has been a lack of management capacity at a local level (ibid).

Informal delivery

Formal delivery programmes have been unable to cope with the demand, which means that many, perhaps most, urban poor households, have had to access urban land through informal routes. Informal delivery options include:

- Informal settlements: spontaneous and planned occupation of land. Informal settlements are partially a result of the transfer of traditional/ customary tenure processes to an urban setting. Many informal settlements have *de facto* security of tenure, especially those in township areas, while others are still at risk of eviction. Residents of informal settlements can have rights in terms of legislation such as the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act and the Extension of Security of Tenure Act. Informal tenure plays an important role in urban development in developing countries - for new migrants to urban areas, informal tenure is sometimes the only way of getting access to some of the benefits of urban life. Moreover, for many poor households it is the only affordable option for accommodation - informal tenure can be cheap, and relatively quick and easy to access. In addition, informal settlements can often accommodate a wider variety of informal economic activities, some of which may be difficult to accommodate in formal residential areas. Social networks may also be more supportive than for more formal housing, as informal settlements accommodate the clustering of shacks to align with social networks, or the building of larger shacks for extended families. Informal settlements can form in a variety of ways, ranging from organised land "invasions" to gradual settlement of individual households. Informal settlements can vary enormously in their stability and security, ranging from settlements in constant danger of eviction to settlements where private

landowners have granted permission or settlements on public land with the tacit consent of authorities. Informal settlements should therefore not be simplistically defined as being illegal and spontaneous, but should rather be seen as being in a continuum between completely illegal and spontaneous settlements and completely legal and planned settlements. Informal settlements are often seen by residents as being a combination of “rural” or “customary” and individualised processes (WCPHD/CCT, 2003).

- Irregular subdivisions: Irregular subdivisions (where developers or communities informally subdivide and develop a piece of land, and sometimes also illegally tap into services) are one of the major ways in which people get access to land in Latin America, but seems to be fairly rare in South Africa. Examples exist, however, e.g. an investigation of Umlazi found a few examples of irregular subdivision areas with informally subdivided plots, roads, brick/block houses and illegal water connections (BESG, 1997), and some of the early Homeless People’s Federation projects resulting from land occupations, such as Kanana, could also be categorised as irregular subdivisions.
- Informal renting/ sharing: Due to lack of other options, many households’ only access to land is informal rental (or sharing) of backyard structures or rooms in houses. Backyard dwellers and sharers have very little security of tenure and are frequently evicted, especially during housing consolidation projects (where landlords extend and improve their dwellings). Studies have shown that the main reason why property owners accommodate people in backyard shacks is because of the desire to accommodate relatives; wanting to supplement income through rent is only a secondary reason, and in up to 50% of cases there is no monetary rent at all, but a reciprocal relationship in which both landlord and tenant often helped each other, e.g. by buying food (Watson et al., 1994; Yose, 1999). In general, informal rental generally takes the form of “families accommodating a small number of additional people on their properties, for rents (where these are charged) which may do little more than cover the costs of the landlord him/herself” (Watson et al., 1994: 19).

4. KEY ISSUES

This chapter identifies the key issues and gaps with regard to land issues in urban areas. Where appropriate, opportunities for possible interventions to enhance the fulfillment of the urban land needs of the poor are also identified. These interventions could take the form of enhancing understanding of certain aspects of urban land issues, changing the legal/institutional framework or supporting programmes/ initiatives.

The key issues identified are grouped in five clusters:

- Delivery programmes for providing urban land for the poor
- The needs of the poor/sustainable livelihoods
- Formal institutional framework and organisations
- Property market issues
- Informal processes

4.A. Delivery programmes for providing urban land to the poor

The main issues relating to programmes for the delivery of urban land to the poor are:

- The inadequate rate of Housing Subsidy Scheme delivery
- Narrow eligibility criteria
- Slow identification and acquisition of land for housing
- Slow land development procedures
- Insufficient funding for bulk infrastructure
- Land restitution